

Important-Enrolled Bill

STAT

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|---|---|-----------|--------------------|---|
| SUBJECT: (Optional) Enrolled Bill S.272 | | | | |
| FROM: DD/OLL Rm. 7D43 | | EXTENSION | NO. OLL 83-1859 | |
| | | | DATE 4 August 1983 | |
| TO: (Officer designation, room number, and building) | DATE | | OFFICER'S INITIALS | COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.) |
| | RECEIVED | FORWARDED | | |
| 1. Exec Registry | 4 AUG 1983 | | <i>P</i> | |
| 2. | | | | |
| 3. <i>Ex Dir</i> | | | | |
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| 5. DDCI <i>m</i> | 04 AUG 1983 | | <i>△</i> | |
| 6. | | | | |
| 7. <i>DD/OLL</i> | | | | |
| 8. <i>Legislation</i> | | | | |
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| 12. | | | | |
| 13. | <p>Within TWO DAYS (including holidays but excluding Sundays) after receipt of this request, your reply (original and one copy) should be delivered VIA SPECIAL MESSENGER to Mrs. Julia Yuille, Room 7201, New Executive Office Building.</p> | | | |
| 14. | | | | |
| 15. | | | | |

Aug 1 3 30 PM '83

Central Intelligence Agency
Washington, D.C. 20505

MSL

Executive Director

3 8 August 1983

NOTE FOR D/OLL

DD/OLL

9 AUG 1983

As our Japanese friends might say of my
impassioned marginalia: "I beg your most humble
excuse".

STAT



STAT



He needn't apologize Point
well taken. It had indeed
been coordinated with OAC
before dispatch

9 AUG 1983



0200240016-9
OCL#
83-1789

STAT

STAT

Original - Addressee
✓ 1 - EX DIR
1 - ER
1 - D/OLL
1 - DD/OLL
1 - OLL Record
1 - OLL Chrono

Must get in habit of
sending into copies of
such correspondence
to OG C

N.B. Assume response was
coordinated beforehand with
OCC.



Central Intelligence Agency

83-3953



Washington, D.C. 20505

04 AUG 1983

Honorable David A. Stockman
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Stockman:

This is in response to your request for the views of the Central Intelligence Agency on Enrolled Bill S.272, an act to improve small business access to Federal procurement information. The Act continues the requirement that Federal agencies publish notice of procurements above stated dollar thresholds, with ten enumerated exemptions. The Act adds the new requirements that Federal agencies wait a specified time interval after publication of a notice of procurement before awarding the contract and that sole source contracts above a stated dollar threshold be approved by the head of the procuring activity or his deputy. I have no objection to Presidential approval of the legislation.

Concerning the impact of this legislation on the Central Intelligence Agency, the Act retains existing law exempting classified procurements from the requirement of publishing procurement notices in the Commerce Business Daily. Consequently, this Act assures that this notice requirement will not interfere with the mission of the Central Intelligence Agency.

I do wish to express concern, however, about the requirement that any sole source contract over a specified threshold amount must be approved by the head of the procuring activity or his deputy, on a non-delegable basis. The fact that this approval requirement is non-delegable could act to impede the efficient administration of procurement activities throughout the federal government, especially as the threshold for requiring this approval is successively reduced to the \$300,000 threshold in fiscal year 1986. I believe this aspect of the Act forebodes an undesirable trend.

We appreciate very much the opportunity to comment on this legislation.

Sincerely,

/S/ John N. McMahon

John N. McMahon
Deputy Director of Central Intelligence

DCI
EXEC
REG

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

ULL

83-1927

August 2, 1983

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

SEE DISTRIBUTION

SUBJECT: GSA draft bill to amend the Federal Property and Administrative Services Act of 1949, as amended, to provide multiyear contracting authority to all executive agencies of the Federal Government.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than August 30, 1983.

Direct your questions to Gregory Jones (395-3856), of this office.

[Signature]
James C. Murr for
Assistant Director for
Legislative Reference

Enclosures

cc: P. Szervo L. Dowd S. Smith
Jane Finn Roger Greene

8/22/83

called Greg Jones
GSA has no objection to
this proposed bill

- coordinated with
C/PMS/OL
C/PMS/DDST
+ DC/LEED/OGC

STAT

DISTRIBUTION:

Department of Defense
Department of Energy
Veterans Administration
Small Business Administration
Department of Health and Human
Services
Department of Transportation
Department of Commerce
Department of Agriculture
National Aeronautics and Space
Administration
Department of Justice
Department of the Interior
Central Intelligence Agency
Department of State
Office of Personnel Management



Honorable George Bush
President of the Senate
Washington, DC 20510

Dear Mr. President:

Transmitted herewith for referral to the appropriate committee is a draft bill prepared by the General Services Administration (GSA) to amend the Federal Property and Administrative Services Act of 1949, as amended, to provide multiyear contracting authority to all executive agencies of the Federal Government.

The proposed legislation would authorize executive agencies to enter into contracts not in excess of five years when such arrangements are determined to be in the best interests of the Government. Presently, executive agencies are prohibited from contracting for property and services for periods of time in excess of one year without expressed statutory authorization.

In 1971, the Commission on Government Procurement reported that the advantages of multiyear procurement exceeded its disadvantages. This was endorsed by the Comptroller General of the United States in his report to Congress (PSAD-73-54) dated January 10, 1978, entitled "Federal Agencies Should Be Given Multiyear Contracting Authority for Supplies and Services." Specifically, the Comptroller General stated that the Congress should enact legislation authorizing general multiyear contracting authority for Federal agencies and provide for the Office of Federal Procurement Policy to develop appropriate criteria to guide the agencies in its use.

Significant savings are expected to accrue to the Government if multiyear contracting authority is granted. These savings would be reflected in lower acquisition prices and reduced administrative costs incurred when contracting for property and services in this manner. These anticipated savings are based on several factors.

First, multiyear contracting will reduce the administrative costs associated with awarding annual federal contracts. On annual contracts, the Government follows prescribed procurement procedures in preparing and issuing solicitations and, evaluating bids and offers for each procurement action preparatory to awarding a contract. Under multiyear contracting, the number of times that these procedures are used will be reduced resulting in administrative savings in resources and materials. Similarly, multiyear contracting would also reduce prospective contractors' administrative costs associated with the bid/proposal preparation in response to Government solicitations that culminate in annual contracts.

2

Second, multiyear contracts will result in lower acquisition prices. Often annual contracts are not the most economical method for obtaining property or services. For example, in high technology, it is the general trade practice for firms to sell high technology systems on a systems life basis. Because executive agencies are prohibited from using multiyear contracts, the Government must use annual contracts with the consequence that it frequently can not obtain the most advantageous acquisition prices. In contracts which are labor intensive, annual contracts may not be the most advantageous to the Government particularly where the contractor needs to recruit a labor force and establish an effective organization to manage contract performance. A multiyear contract would enable the contractor to intensify the training in specialized fields, and to amortize training costs, the costs of equipment and supplies and other costs associated with the new start of operations over a longer period. In addition, the continuity of production or performance for more than one year, the resultant stabilizing of work forces and the amortization of contract costs for more than one year, should enhance the competition among firms for multiyear contracts.

For the reasons stated above, prompt and favorable consideration of the enclosed draft bill is recommended.

The Office of Management and Budget has advised that from the standpoint of the Administration's program, there is no objection to the submission of this proposed legislation to the Congress.

Sincerely,

Enclosure

A BILL

To amend the Federal Property and Administrative Services Act of 1949, as amended, to provide multiyear contract authority.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That the Federal Property and Administrative Services Act of 1949, as amended, is further amended by adding a new section 306 as follows:

"MULTIYEAR CONTRACTS

"Section 306. (a) An executive agency may make contracts for the acquisition of property or services for periods not in excess of five years, if —

"(1) funds are available and adequate for payment of the costs for such contracts for the first fiscal year; and

"(2) the agency head determines that —

"(A) the government need for the property or services being acquired over the period of the contract is reasonably firm and continuing; and

"(B) such a contract will serve the best interest of the United States by encouraging effective competition or promoting economics in administration, performance and operation; and

"(C) such a method of contracting will not inhibit small business participation.

"(b) In the event that funds are not made available for the continuation of such a contract into a subsequent fiscal year, the contract shall be cancelled and any cancellation costs incurred shall be paid from funds originally available for performance of the contract, or currently available for acquisition of similar property or services, and not otherwise obligated, or funds otherwise made available for such payments.

"(c) Nothing herein is intended to modify or affect any other provision of law which authorizes multiyear contracting."

Honorable Thomas P. O'Neill, Jr.
Speaker of the House of
Representatives
Washington, DC 20515

Dear Mr. Speaker:

Transmitted herewith for referral to the appropriate committee is a draft bill prepared by the General Services Administration (GSA) to amend the Federal Property and Administrative Services Act of 1949, as amended, to provide multiyear contracting authority to all executive agencies of the Federal Government.

The proposed legislation would authorize executive agencies to enter into contracts not in excess of five years when such arrangements are determined to be in the best interests of the Government. Presently, executive agencies are prohibited from contracting for property and services for periods of time in excess of one year without expressed statutory authorization.

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"(B) such a contract will serve the best interest of the United States by encouraging effective competition or promoting economics in administration, performance and operation; and

"(C) such a method of contracting will not inhibit small business participation.

"(b) ~~In the event that funds are not made available for the continuation of such a contract into a subsequent fiscal year, the contract shall be cancelled and any cancellation costs incurred shall be paid from funds originally available for performance of the contract, or currently available for acquisition of similar property or services, and not otherwise obligated, or funds otherwise made available for such payments.~~

"(c) ~~Nothing herein is intended to modify or affect any other provision of law which authorizes multiyear contracting.~~

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

ULL

83-1927

August 2, 1983

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

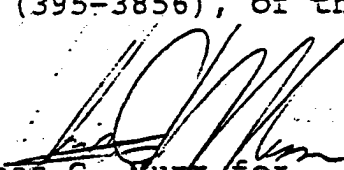
SEE DISTRIBUTION

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Direct your questions to Gregory Jones (395-3856), of this office.


James C. Murr for
Assistant Director for
Legislative Reference

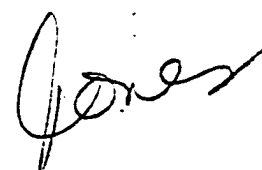
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cc: P. Szervo L. Dowd S. Smith
 Jane Finn Roger Greene

DISTRIBUTION:

Department of Defense
Department of Energy
Veterans Administration
Small Business Administration
Department of Health and Human
Services
Department of Transportation
Department of Commerce
Department of Agriculture
National Aeronautics and Space
Administration
Department of Justice
Department of the Interior
Central Intelligence Agency
Department of State
Office of Personnel Management

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For the reasons stated above, prompt and favorable consideration of the enclosed draft bill is recommended.

The Office of Management and Budget has advised that from the standpoint of the Administration's program, there is no objection to the submission of this proposed legislation to the Congress.

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"(b) ~~In the event that funds are not made available for the continuation of such a contract into a subsequent fiscal year, the contract shall be cancelled and any cancellation costs incurred shall be paid from funds originally available for performance of the contract, or currently available for acquisition of similar property or services, and not otherwise obligated, or funds otherwise made available for such payments.~~

"(c) ~~Nothing herein is intended to modify or affect any other provision of law which authorizes multiyear contracting.~~

Page Denied



OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

July 5, 1983

movement (98th)

| |
|-----------------|
| General Counsel |
| 83-05739 |
| OLL |
| 83-1732 |

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

- Department of Housing and Urban Development
- Department of Defense
- Small Business Administration
- Department of Energy
- National Aeronautics and Space Administration
- Department of the Treasury
- Department of Health and Human Services
- Department of Transportation
- Veterans Administration
- Department of Agriculture
- Federal Emergency Management Agency
- Department of Labor
- Department of Justice
- Department of Commerce
- ☒ Central Intelligence Agency
- Environmental Protection Agency
- Department of the Interior

SUBJECT: GSA views on S. 421, to require the Comptroller General of the U.S. to ascertain increases in the cost of major acquisition programs of the civilian agencies of the Executive branch; to limit the obligation and expenditure of Federal funds to carry out any major civil acquisition program...

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than cob ~~August 2, 1983~~

Questions should be referred to Gregory Jones (395-3856), the legislative analyst in this office.

*8/2/83
called Greg Jones and
informed him that we
had no objection*

[Signature]
James C. Murr for
Assistant Director for
Legislative Reference

STAT

Enclosures

cc: S. Smith

M. Chaffee

P. Szervo

R. Greene

L. Dowd



General
Services
Administration

Washington, DC 20405

Honorable William V. Roth, Jr.
Chairman, Committee on
Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The General Services Administration (GSA) wishes to submit its views on S. 421, a bill "To require the Comptroller General of the United States to ascertain increases in the cost of major acquisition programs of the civilian agencies of the executive branch; to limit the obligation and expenditure of Federal funds to carry out any major civil acquisition program after there has been a major increase in the cost of such civil acquisition program until enactment of a law providing new authority to carry out such civil acquisition program, and for other purposes."

The bill would require an agency to submit reports to the Comptroller General regarding costs on civil acquisition programs exceeding \$50 million. Whenever a program exceeded its initial cost estimate by 25 per cent, the Comptroller General would be required to notify Congress and the procurement agency. After such notification, the procurement agency would be prohibited from expending additional funds on the program until specific legislation is enacted to allow further expenditures.

GSA strongly endorses the intent of S. 421 to reduce wasteful or unnecessary Government expenditures. However, for the reasons stated below, we believe that the bill would create problems which would outweigh any potential in curbing cost overruns. Accordingly, GSA opposes S. 421.

The bill could substantially increase the paperwork burden on contracting agencies. Section 3 requires the Comptroller General to monitor costs on all major acquisition programs. To implement this requirement, the agencies must submit a cost analysis report "at such times as the Comptroller General shall require." To prepare such a report, perhaps on a number of occasions during the term of the contract, would use the time of contracting personnel which would be better spent insuring the contractor's timely and efficient performance.

The requirement of S. 421 that, after notification of a 25 per cent cost overrun, special legislation must be passed before further funds can be obligated may cause significant contracting problems. There may be instances where cost increases clearly have legitimate reasons or where continued performance of a contract may be vitally important. The legislative process would be too cumbersome to deal with the exceptional situations requiring immediate action. Delays in proceeding with contract performance in these instances would serve only to increase cost overruns.

Control of the expenditure of appropriated funds should remain the responsibility of the executive branch. To provide for oversight of individual programs by the legislative branch serves only to complicate an already complex system of laws governing Federal procurement. We believe that the proper and most effective point for Congressional review of an agency's ability to control costs is, as it presently exists, during the appropriations process.

If the Committee decides to take favorable action on S. 421, GSA urges the following modifications be made to the bill. The definition of "major civil acquisition program" should be clarified. In regard to public buildings, it is unclear whether "program" refers to a single \$50 million project or to a budget activity within a fiscal year's new construction, acquisition, or repair or alteration program. In regard to acquisitions, the relation between "major civil acquisition program" as used in S. 421 and "major system acquisition" as used in the Office of Management and Budget (OMB) Circular A-109 must be established. In addition, we believe that, if the requirements of S. 421 are imposed on the civilian sector, they should also be applicable to defense-related contracts.

The Office of Management and Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this report to your Committee.

Sincerely,

98TH CONGRESS
1ST SESSION

S. 421

To require the Comptroller General of the United States to ascertain increases in the cost of major acquisition programs of the civilian agencies of the executive branch; to limit the obligation and expenditure of Federal funds to carry out any major civil acquisition program after there has been a major increase in the cost of such civil acquisition program until enactment of a law providing new authority to carry out such civil acquisition program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3 (legislative day, JANUARY 25), 1983

Mr. PROXMIRE (for himself, Mr. PRYOR, and Mr. JEPSEN) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To require the Comptroller General of the United States to ascertain increases in the cost of major acquisition programs of the civilian agencies of the executive branch; to limit the obligation and expenditure of Federal funds to carry out any major civil acquisition program after there has been a major increase in the cost of such civil acquisition program until enactment of a law providing new authority to carry out such civil acquisition program, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 *That for the purposes of this Act—*

1 (1) the term "agency" shall have the same mean-
2 ing as provided in section 551(1) of title 5, United
3 States Code;

4 (2) the term "civil acquisition program" means
5 any construction, acquisition, or procurement program
6 (other than a construction, acquisition, or procurement
7 program of the Department of Defense), including any
8 research, development, test, and evaluation related to
9 such program;

10 (3) the term "Comptroller General" means the
11 Comptroller General of the United States;

12 (4) the term "Federal funds" includes funds pro-
13 vided by the Federal Government by grant, but does
14 not include funds allocated to any State or political
15 subdivision thereof under chapter 67 of title 31, United
16 States Code, or any similar law;

17 (5) the term "initial cost estimate", when used
18 with respect to a civil acquisition program, means the
19 estimated total cost of such civil acquisition program
20 on the basis of which the Congress enacts a law
21 authorizing the appropriation of funds, or, if enacted
22 first, a law appropriating funds, for the first time for
23 such civil acquisition program; and

24 (6) the term "major civil acquisition program"
25 means any civil acquisition program that (A) is

1 financed entirely with Federal funds, and (B) is
2 estimated to require an eventual total expenditure (in-
3 cluding expenditures for research, development, test,
4 and evaluation related to such program) exceeding
5 \$50,000,000.

6 SEC. 2. (a) The Comptroller General shall be responsi-
7 ble for ascertaining increases in the cost of each major civil
8 acquisition program and compiling statistics on such in-
9 creases. Such statistics shall be compiled from data submitted
10 to the Comptroller General under section 3 and from data
11 collected by the Comptroller General in the process of carry-
12 ing out audits and reviews authorized by law.

13 SEC. 3. The head of an agency carrying out any major
14 civil acquisition program shall transmit to the Comptroller
15 General, at such times as the Comptroller General shall re-
16 quire, a report on such civil acquisition program. Such report
17 shall include—

18 (1) a description of such civil acquisition program
19 in terms of the mission intended to be performed using
20 the property acquired under such civil acquisition pro-
21 gram and the expectations for the performance of such
22 property;

23 (2) the initial cost estimate for such civil acqui-
24 sition program;

1 (3) the estimated total cost of such civil acqui-
2 sition program as of the date on which such report is
3 transmitted to the Comptroller General;

4 (4) the total amounts of funds authorized, funds
5 appropriated, and funds obligated for such civil acqui-
6 sition program prior to the date on which such report is
7 transmitted;

8 (5)(A) the estimated or actual date of completion
9 of such civil acquisition program as of the end of such
10 fiscal year; and

11 (B) the date by which such civil acquisition pro-
12 gram was planned to be completed when the civil ac-
13 quisition program commenced;

14 (6) in the case of any such civil acquisition pro-
15 gram for which the estimated or actual completion date
16 is more than six months after the date by which such
17 civil acquisition program was planned to be completed
18 when the civil acquisition program commenced, the
19 reasons that such civil acquisition program will not be
20 completed or was not completed by the planned com-
21 pletion date;

22 (7) all changes in the quantity or size of the prop-
23 erty to be acquired under such civil acquisition pro-
24 gram from the quantity or size originally planned to be

1 acquired when the civil acquisition program com-
2 menced, and the reasons for each such change;

3 (8) the reasons for any actual or projected in-
4 crease in the total cost of such civil acquisition pro-
5 gram by 25 per centum or more over the initial cost
6 estimate for such civil acquisition program; and

7 (9) actions taken or proposed to be taken to con-
8 trol subsequent increases in the cost of such civil acqui-
9 sition program.

10 SEC. 4. (a)(1) Whenever the Comptroller General deter-
11 mines in the case of any major civil acquisition program that
12 the actual or estimated total cost of such civil acquisition
13 program exceeds the initial cost estimate of such civil acqui-
14 sition program by 25 per centum or more, the Comptroller
15 General shall transmit promptly—

16 (A) notice of the determination to the head of the
17 agency carrying out such civil acquisition program; and

18 (B) a report on such determination to the Con-
19 gress.

20 (2) The report transmitted under paragraph (1) shall in-
21 clude—

22 (A) a statement of the reasons for the increase in
23 the actual or estimated total cost of such civil acqui-
24 sition program;

1 (B) all actions taken or proposed to be taken to
2 control subsequent increases in the cost of such civil
3 acquisition program;

4 (C) each change made in the schedule milestones
5 or in any estimates of the quantity of the property that
6 the agency is acquiring under such civil acquisition
7 program and a description of the extent to which such
8 changes have contributed to the increase in the actual
9 or estimated total cost of such civil acquisition pro-
10 gram; and

11 (D) an index of all testimony and documents for-
12 mally provided to the Congress on the estimated total
13 cost of such civil acquisition program.

14 (b) In the case of any major civil acquisition program
15 with respect to which the Comptroller General transmits a
16 notice under subsection (a)(1)(A), no funds may be obligated
17 or expended on such civil acquisition program after the date
18 on which the head of the agency carrying out such civil ac-
19 quisition program receives such notice unless a law described
20 in subsection (c) is enacted.

21 (c) The law referred to in subsection (b) means a law
22 which (1) contains only provisions which provide authority to
23 obligate and expend funds on a major civil acquisition pro-
24 gram to which subsection (b) applies, (2) provides such au-
25 thority for a period of not more than one year beginning on

1 the date of enactment of such law, and (3) is enacted after
2 the date on which the head of the agency referred to in sub-
3 section (b) receives the notice referred to in such subsection.

4 SEC. 5. The Comptroller General shall develop and im-
5 plement policies and procedures applicable to all agencies for
6 reflecting the effects of general economic inflation on cost
7 data reported to the Comptroller General under section 3.

8 SEC. 6. This Act shall not apply in the case of any
9 major civil acquisition program for which funds have been
10 appropriated prior to the date of enactment of this Act.

○



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

July 5, 1983

General Counsel

83-05739

OLL #

83-1732

LEGISLATIVE REFERRAL MEMORANDUM

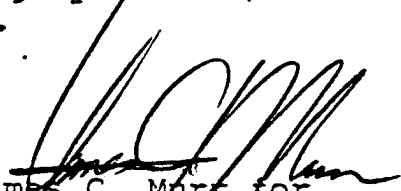
TO: Legislative Liaison Officer
Department of Housing and Urban Development
Department of Defense
Small Business Administration
Department of Energy
National Aeronautics and Space Administration
Department of the Treasury
Department of Health and Human Services
Department of Transportation
Veterans Administration
Department of Agriculture
Federal Emergency Management Agency
Department of Labor
Department of Justice
Department of Commerce
✓ Central Intelligence Agency
Environmental Protection Agency
Department of the Interior

SUBJECT: GSA views on S. 421, to require the Comptroller General of the U.S. to ascertain increases in the cost of major acquisition programs of the civilian agencies of the Executive branch; to limit the obligation and expenditure of Federal funds to carry out any major civil acquisition program...

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than cob August 2, 1983.

Questions should be referred to Gregory Jones (395-3856), the legislative analyst in this office.


James C. Morr for
Assistant Director for
Legislative Reference

Enclosures

cc: S. Smith

M. Chaffee

P. Szervo

R. Greene

L. Dowd



General
Services

Administration

Washington, DC 20405

Honorable William V. Roth, Jr.
Chairman, Committee on
Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The General Services Administration (GSA) wishes to submit its views on S. 421, a bill "To require the Comptroller General of the United States to ascertain increases in the cost of major acquisition programs of the civilian agencies of the executive branch; to limit the obligation and expenditure of Federal funds to carry out any major civil acquisition program after there has been a major increase in the cost of such civil acquisition program until enactment of a law providing new authority to carry out such civil acquisition program, and for other purposes."

The bill would require an agency to submit reports to the Comptroller General regarding costs on civil acquisition programs exceeding \$50 million. Whenever a program exceeded its initial cost estimate by 25 per cent, the Comptroller General would be required to notify Congress and the procurement agency. After such notification, the procurement agency would be prohibited from expending additional funds on the program until specific legislation is enacted to allow further expenditures.

GSA strongly endorses the intent of S. 421 to reduce wasteful or unnecessary Government expenditures. However, for the reasons stated below, we believe that the bill would create problems which would outweigh any potential in curbing cost overruns. Accordingly, GSA opposes S. 421.

The bill could substantially increase the paperwork burden on contracting agencies. Section 3 requires the Comptroller General to monitor costs on all major acquisition programs. To implement this requirement, the agencies must submit a cost analysis report "at such times as the Comptroller General shall require." To prepare such a report, perhaps on a number of occasions during the term of the contract, would use the time of contracting personnel which would be better spent insuring the contractor's timely and efficient performance.

The requirement of S. 421 that, after notification of a 25 per cent cost overrun, special legislation must be passed before further funds can be obligated may cause significant contracting problems. There may be instances where cost increases clearly have legitimate reasons or where continued performance of a contract may be vitally important. The legislative process would be too cumbersome to deal with the exceptional situations requiring immediate action. Delays in proceeding with contract performance in these instances would serve only to increase cost overruns.

Control of the expenditure of appropriated funds should remain the responsibility of the executive branch. To provide for oversight of individual programs by the legislative branch serves only to complicate an already complex system of laws governing Federal procurement. We believe that the proper and most effective point for Congressional review of an agency's ability to control costs is, as it presently exists, during the appropriations process. ✓

If the Committee decides to take favorable action on S. 421, GSA urges the following modifications be made to the bill. The definition of "major civil acquisition program" should be clarified. In regard to public buildings, it is unclear whether "program" refers to a single \$50 million project or to a budget activity within a fiscal year's new construction, acquisition, or repair or alteration program. In regard to acquisitions, the relation between "major civil acquisition program" as used in S. 421 and "major system acquisition" as used in the Office of Management and Budget (OMB) Circular A-109 must be established. In addition, we believe that, if the requirements of S. 421 are imposed on the civilian sector, they should also be applicable to defense-related contracts.

new
CIA
Bldg?

The Office of Management and Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this report to your Committee.

Sincerely,

II

98TH CONGRESS
1ST SESSION

S. 421

To require the Comptroller General of the United States to ascertain increases in the cost of major acquisition programs of the civilian agencies of the executive branch; to limit the obligation and expenditure of Federal funds to carry out any major civil acquisition program after there has been a major increase in the cost of such civil acquisition program until enactment of a law providing new authority to carry out such civil acquisition program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3 (legislative day, JANUARY 25), 1983

Mr. PROXMIRE (for himself, Mr. PRYOR, and Mr. JEPSEN) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To require the Comptroller General of the United States to ascertain increases in the cost of major acquisition programs of the civilian agencies of the executive branch; to limit the obligation and expenditure of Federal funds to carry out any major civil acquisition program after there has been a major increase in the cost of such civil acquisition program until enactment of a law providing new authority to carry out such civil acquisition program, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 *That for the purposes of this Act—*

1 (1) the term "agency" shall have the same mean-
2 ing as provided in section 551(1) of title 5, United
3 States Code;

4 (2) the term "civil acquisition program" means
5 any construction, acquisition, or procurement program
6 (other than a construction, acquisition, or procurement
7 program of the Department of Defense), including any
8 research, development, test, and evaluation related to
9 such program;

10 (3) the term "Comptroller General" means the
11 Comptroller General of the United States;

12 (4) the term "Federal funds" includes funds pro-
13 vided by the Federal Government by grant, but does
14 not include funds allocated to any State or political
15 subdivision thereof under chapter 67 of title 31, United
16 States Code, or any similar law;

17 (5) the term "initial cost estimate", when used
18 with respect to a civil acquisition program, means the
19 estimated total cost of such civil acquisition program
20 on the basis of which the Congress enacts a law
21 authorizing the appropriation of funds, or, if enacted
22 first, a law appropriating funds, for the first time for
23 such civil acquisition program; and

24 (6) the term "major civil acquisition program"
25 means any civil acquisition program that (A) is

1 financed entirely with Federal funds, and (B) is
2 estimated to require an eventual total expenditure (in-
3 cluding expenditures for research, development, test,
4 and evaluation related to such program) exceeding
5 \$50,000,000.

6 SEC. 2. (a) The Comptroller General shall be responsi-
7 ble for ascertaining increases in the cost of each major civil
8 acquisition program and compiling statistics on such in-
9 creases. Such statistics shall be compiled from data submitted
10 to the Comptroller General under section 3 and from data
11 collected by the Comptroller General in the process of carry-
12 ing out audits and reviews authorized by law.

13 SEC. 3. The head of an agency carrying out any major
14 civil acquisition program shall transmit to the Comptroller
15 General, at such times as the Comptroller General shall re-
16 quire, a report on such civil acquisition program. Such report
17 shall include—

18 (1) a description of such civil acquisition program
19 in terms of the mission intended to be performed using
20 the property acquired under such civil acquisition pro-
21 gram and the expectations for the performance of such
22 property;

23 (2) the initial cost estimate for such civil acqui-
24 sition program;

1 (3) the estimated total cost of such civil acquisi-
2 tion program as of the date on which such report is
3 transmitted to the Comptroller General;

4 (4) the total amounts of funds authorized, funds
5 appropriated, and funds obligated for such civil acquisi-
6 tion program prior to the date on which such report is
7 transmitted;

8 (5)(A) the estimated or actual date of completion
9 of such civil acquisition program as of the end of such
10 fiscal year; and

11 (B) the date by which such civil acquisition pro-
12 gram was planned to be completed when the civil ac-
13 quisition program commenced;

14 (6) in the case of any such civil acquisition pro-
15 gram for which the estimated or actual completion date
16 is more than six months after the date by which such
17 civil acquisition program was planned to be completed
18 when the civil acquisition program commenced, the
19 reasons that such civil acquisition program will not be
20 completed or was not completed by the planned com-
21 pletion date;

22 (7) all changes in the quantity or size of the prop-
23 erty to be acquired under such civil acquisition pro-
24 gram from the quantity or size originally planned to be

1 acquired when the civil acquisition program com-
2 menced, and the reasons for each such change;

3 (8) the reasons for any actual or projected in-
4 crease in the total cost of such civil acquisition pro-
5 gram by 25 per centum or more over the initial cost
6 estimate for such civil acquisition program; and

7 (9) actions taken or proposed to be taken to con-
8 trol subsequent increases in the cost of such civil acqui-
9 sition program.

10 SEC. 4. (a)(1) Whenever the Comptroller General deter-
11 mines in the case of any major civil acquisition program that
12 the actual or estimated total cost of such civil acquisition
13 program exceeds the initial cost estimate of such civil acqui-
14 sition program by 25 per centum or more, the Comptroller
15 General shall transmit promptly—

16 (A) notice of the determination to the head of the
17 agency carrying out such civil acquisition program; and

18 (B) a report on such determination to the Con-
19 gress.

20 (2) The report transmitted under paragraph (1) shall in-
21 clude—

22 (A) a statement of the reasons for the increase in
23 the actual or estimated total cost of such civil acqui-
24 sition program;

1 (B) all actions taken or proposed to be taken to
2 control subsequent increases in the cost of such civil
3 acquisition program;

4 (C) each change made in the schedule milestones
5 or in any estimates of the quantity of the property that
6 the agency is acquiring under such civil acquisition
7 program and a description of the extent to which such
8 changes have contributed to the increase in the actual
9 or estimated total cost of such civil acquisition pro-
10 gram; and

11 (D) an index of all testimony and documents for-
12 mally provided to the Congress on the estimated total
13 cost of such civil acquisition program.

14 (b) In the case of any major civil acquisition program
15 with respect to which the Comptroller General transmits a
16 notice under subsection (a)(1)(A), no funds may be obligated
17 or expended on such civil acquisition program after the date
18 on which the head of the agency carrying out such civil ac-
19 quisition program receives such notice unless a law described
20 in subsection (c) is enacted.

21 (c) The law referred to in subsection (b) means a law
22 which (1) contains only provisions which provide authority to
23 obligate and expend funds on a major civil acquisition pro-
24 gram to which subsection (b) applies, (2) provides such au-
25 thority for a period of not more than one year beginning on

7

1 the date of enactment of such law, and (3) is enacted after
2 the date on which the head of the agency referred to in sub-
3 section (b) receives the notice referred to in such subsection.

4 SEC. 5. The Comptroller General shall develop and im-
5 plement policies and procedures applicable to all agencies for
6 reflecting the effects of general economic inflation on cost
7 data reported to the Comptroller General under section 3.

8 SEC. 6. This Act shall not apply in the case of any
9 major civil acquisition program for which funds have been
10 appropriated prior to the date of enactment of this Act.

○

OGC 83-05454

29 June 1983

STAT MEMORANDUM FOR: [redacted]
Logistics and Procurement Law Division, OGC

STAT FROM: [redacted]
Legislation Division, OGC

SUBJECT: Conference Report on S. 272/H.R. 1043

1. As per our conversation, attached is a copy of the "Conference Report on S. 272, Commerce Business Daily," the conference report on S. 272/H.R. 1043.

2. The most important thing to note is on page H 4433 in Section 2 of the "Joint Explanatory Statement of the Committee of Conference." As that Section indicates, the conferees rejected the Senate approach on the exemption for classified procurements to the general requirement of notice in the Commerce Business Daily and instead determined to retain existing law. As you know, the Agency is well served by existing law. Hence, this return to existing law is even better than the language we negotiated with the Senate and thus is a real gain.

3. You should also note Section 11 of the Statement. As that Section indicates, the conferees determined to adopt a prohibition against sole source contracts, notwithstanding any other provision of law, except those where the head of the procuring activity or his deputy, on a nondelegable basis, approves them. Nondelegability was not in either Bill and thus did not appear to be an issue going into conference. My own belief, however, is that the conferees included it in deference to the Senate, given that the Senate retreated on so many other issues.

STAT 4. The Senate passed the Conference Report on June 27, 1983. House action is expected this week. [redacted]

Legislation Division
Office of General Counsel

Attachment

✓ Distribution
1 - LED File: Procurement (98th Congress)
1 - OGC Signer
1 - PS Signer

June 23, 1983

CONGRESSIONAL RECORD — HOUSE

H 4431

time when our contemporary Explorer has just left our solar system for worlds beyond. It is appropriate that we plan to celebrate the victory of a man who refused to believe that the world was flat at a time when the *Challenger* shuttle circles our globe far above the oceans which Columbus sailed.

The accomplishments of today are the result of the same courage, the same creativity and the same conviction exemplified by Christopher Columbus.

The Quincentenary Jubilee does not just honor Christopher Columbus' discovery of America. It embodies our own respect and reverence for all who rise to meet the challenges—and so by doing—discover new worlds.

APPOINTMENT OF CONFEREES ON H.R. 3135, LEGISLATIVE BRANCH APPROPRIATIONS, 1984

Mr. OBEY. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 3135) making appropriations for the legislative branch for the fiscal year ending September 30, 1984, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin? The Chair hears none and, without objection, appoints the following conferees: Messrs. FAZIO, OBEY, MURTHA, TRAXLER, Mrs. BOGGS, and Messrs. HIGHTOWER, WHITTEN, LEWIS of California, CONTE, MYERS, and PORTER.

There was no objection.

CONFERENCE REPORT ON S. 273, EXTENSION OF 8(A) PILOT PROGRAMS

Mr. MITCHELL submitted the following conference report and statement on the Senate bill (S. 273) to amend section 8(a)(1) of the Small Business Act:

CONFERENCE REPORT (H. REPT. NO. 98-262)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 273) to amend section 8(a)(1) of the Small Business Act, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

SEC. 1. (a) Clause (B) of the first sentence of section 8(a)(1) of the Small Business Act is amended by striking out "as shall be designated by the president within 60 days after the effective date of this paragraph," and inserting in lieu thereof "(other than the Department of Defense or any compo-

nent thereof) as shall be designated by the President."; and

(b) The designation of an agency pursuant to the amendment made by subsection (a) shall be made not later than sixty days after the date of enactment of this Act.

SEC. 2. The last sentence of section 8(a)(1) of the Small Business Act is amended to read as follows: "No contract may be entered into under subparagraph (B) prior to October 1, 1983 nor after September 30, 1985."

SEC. 3. The last sentence of section 8(a)(2) is amended to read as follows: "The authority to waive bonds provided in this paragraph (2) may not be exercised prior to October 1, 1983 nor after September 30, 1985."

Amend the title so as to read: "An Act to amend section 8(a) of the Small Business Act."

And the House agree to the same.

PARREN J. MITCHELL.
NEAL SMITH.
JOSEPH P. ADDABBO.
RON WYDEN.
DENNIS E. ECKART.
TOM LUKEN.
JOSEPH M. MCDADE.
SILVIO O. CONTE.
WM. BROOMFIELD.
LYLE WILLIAMS.

Managers on the Part of the House.

LOWELL P. WEICKER, JR.
RUDY BOSCHWITZ.
LARRY PRESSLER.
SAM NUNN.
CARL LEVIN.

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 273) to amend section 8(a)(1) of the Small Business Act, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment struck all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The principle differences among the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

1. 8(A) PROCUREMENT PILOT

P.L. 95-507 authorized an 8(a) pilot program which expired September 30, 1980. Under the provisions of the pilot, the President was authorized to select one agency over whom SBA would be given the authority to take procurement contracts for inclusion in SBA's 8(a) program for the development of minority enterprise. The President selected the Department of the Army.

The Senate bill would reopen the pilot program and require the President to select a new agency, other than the Defense Department or a component thereof, within sixty days. The pilot program would expire twenty months after enactment (sixty days for the President to act plus eighteen months for the pilot to operate).

The House amendment also would reopen this pilot program on October 1, 1983 for a period of two years, but would not restrict the authority of the President as to the

agency to be selected nor would it require the selection to be done within any particular time frame.

The conference substitute reopens this pilot program on October 1, 1983 and requires the President, within sixty days after enactment, to select a new agency, other than the Defense Department or a component thereof, to participate in the program. The pilot is effective through September 30, 1985.

2. SURETY BOND PILOT

P.L. 95-507 also authorized a surety bond pilot program which expired September 30, 1980. Under this pilot, SBA was authorized to waive surety bond requirements for 8(a) contractors which are start-up concerns and which have not been participating in the 8(a) program for more than one year. It took SBA more than two years to adopt final regulations. The Agency never granted any waivers.

The Senate bill does not reopen this pilot program.

The House amendment, effective on October 1, 1983, would reopen this pilot program through September 30, 1985.

The conference substitute also reopens this pilot program on October 1, 1983 through September 30, 1985.

The conferees recognize that by its terms the use of this authority will be limited under the eligibility requirements. Under the statute, before any bond requirement is waived, the Administration must determine, among other things, that the 8(a) small business concern is unable to obtain the requisite bond either from a surety company or by using the Administration's guarantee program. Furthermore, the Administration must determine that the contractor has the ability to perform the contract.

On the other hand, the conferees expect that the Administration will take the necessary steps to implement this pilot program and not take any action which would unnecessarily limit potential eligible participants by excluding from entrance into the regular 8(a) program firms which might be eligible for a bond waiver if admitted to the program.

PARREN J. MITCHELL.
NEAL SMITH.
JOSEPH P. ADDABBO.
RON WYDEN.
DENNIS E. ECKART.
TOM LUKEN.
JOSEPH M. MCDADE.
SILVIO O. CONTE.
WILLIAM S. BROOMFIELD.
LYLE WILLIAM.

Managers on the Part of the House.

LOWELL P. WEICKER, JR.
RUDY BOSCHWITZ.
LARRY PRESSLER.
SAM NUNN.
CARL LEVIN.

Managers on the Part of the Senate.

CONFERENCE REPORT ON S. 272, COMMERCE BUSINESS DAILY

Mr. MITCHELL submitted the following conference report and statement on the Senate bill (S. 272) to improve small business access to Federal procurement information:

CONFERENCE REPORT (H. REPT. NO. 98-263)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 272) to improve small business access to Federal procurement information, having met, after full and free conference, have agreed to rec-

H 4432

CONGRESSIONAL RECORD — HOUSE

June 23, 1983

commend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

"(a) Section 8(e) of the Small Business Act is amended to read as follows:

"(e)(1) It shall be the duty of the Secretary of Commerce, and the Secretary is hereby empowered, to obtain notice of all proposed competitive and noncompetitive civilian and defense procurement actions of \$10,000 and above from any Federal department, establishment or agency (hereinafter in this subsection referred to as 'department') engaged in procurement of property, supplies, and services in the United States; and to publicize such notices in the daily publication *Commerce Business Daily*, immediately after the necessity for the procurement is established: *Provided*, That nothing in this paragraph shall require publication of such notices with respect to those procurements in which it is determined on a case-by-case basis that (A) the procurement for security reasons is of a classified nature; (B) the Federal department's need for the property, supplies, or services is of such unusual and compelling urgency that the Government would be seriously injured if the time periods provided for in paragraph 2 were complied with; (C) a foreign government reimburses the Federal department for the cost of the procurement of the property, supplies, or services for such government and only one source is available, or the terms of an international agreement or treaty between the United States and a foreign government authorize or require that all such procurement shall be from sources specified within such international agreement or treaty; (D) a statute provides that the procurement be made through another Federal department or from a specified source; (E) the procurement is for utility services and only one source is available; (F) the procurement is made against an order placed under a requirement or similar contract, including orders for perishable subsistence supplies; (G) the procurement results from acceptance of a proposal pursuant to the Small Business Innovation Development Act of 1982 or an unsolicited proposal from an educational institution that demonstrates a unique or innovative research concept and publication of such unsolicited proposal would improperly disclose the originality of thought or innovativeness of the proposed research; or (H) it is determined in writing by the head of the Federal department, with the concurrence of the Administrator, that advance notice is not appropriate or reasonable.

"(2) Whenever a Federal department is required to publish notice of procurement actions pursuant to paragraph (1) of this subsection, such department shall not—

"(A) issue a solicitation until at least fifteen days have elapsed from the date of publication of a proper notice of the action in the *Commerce Business Daily*, except if the solicitation is for procurement of requirements categorized as research or development effort, in which case until at least thirty days have elapsed from the date of such publication;

"(B) foreclose competition until at least thirty days have elapsed from either (i) the date of issuance of the solicitation, or (ii) in the case of orders under a basic agreement, basic ordering agreement, or similar arrangement, the date of publication of a proper notice of intent to place the order; or

"(C) commence negotiations for the award of a sole source contract until at least thirty days have elapsed from the date of publication of a proper notice of intent to contract: *Provided*, That nothing in this subparagraph shall prohibit an officer or employee of a Federal department from responding to a request for information.

"(3) Whenever notice is required by paragraph (1), such notice shall include—

"(A) a clear description of the property, supplies, or services to be contracted for, which description is not unnecessarily restrictive of competition;

"(B) the name, address and telephone number of the officer or employee of the Federal department who may be contacted for the purpose of obtaining a copy of either the solicitation or, if the notice is for an intent to contract on a sole source basis, such specification and information as practicable regarding the service or performance to be awarded; and

"(C) solely with respect to notice of intent to contract on a sole source basis, a statement that interested persons are invited to identify their interest and capability to respond to such requirement, or to submit proposals in response to such notice, within the stated period of time provided under paragraph (2).

"(4) Notwithstanding any other provision of law, unless the negotiations would be conducted pursuant to this section or section 9 of this Act, a Federal department may not commence negotiations for the award of a sole source contract for more than \$1,000,000 in fiscal year 1984, for more than \$500,000 in fiscal year 1985 and for more than \$300,000 in fiscal year 1986 and each year thereafter unless—

"(A) the head of the procuring activity or his deputy, on a non-delegable basis, has approved the authority to enter into such contract, and

"(B) the contracting officer for such sole source contract has evaluated the responses to the notice of procurement action required in subparagraph (3)(C):

Provided, That nothing in this subparagraph shall prohibit an officer or employee of a Federal department from responding to a request for information.

"(5) In the case of all procurement actions in excess of \$25,000 in which the award of a contract is likely to result in the award of subcontracts under such contract, unless the procurement for security reasons is of a classified nature, the Federal department shall promptly furnish for publication by the Secretary of Commerce a notice announcing the award in the *Commerce Business Daily*.

"(6) As used in this subsection—

"(A) the term 'sole source contract' means a contract for the purchase of property, supplies or services which is entered into or proposed to be entered into by a Federal department after soliciting and negotiating with only one source.

"(B) The term 'unsolicited proposal' means a proposal that is submitted to a Federal department on the initiative of the submitter for the purpose of obtaining a contract with the United States government, and which is not in response to a formal or informal request (other than a departmental request constituting a publicized general statement of need in areas of science and technology-based research and development that are of interests to the department)."

(b)(1) Except as to the amendments made to section 8(e)(4) of the Small Business Act as added by section (a) of this Act, the amendments made by this Act shall apply to procurement actions initiated ninety days after the date of enactment of this Act.

(2) The amendments made to section 8(e)(4) of the Small Business Act as added by section (a) of this Act shall apply to procurement actions initiated on or after October 1, 1983.

(3) The provisions of this Act shall apply to the Tennessee Valley Authority only with respect to procurements to be paid from appropriated funds.

And the House agree to the same.

PARRIN J. MITCHELL,
NEAL SMITH,
JOSEPH P. ADDABO,
RON WYDEN,
DENNIS E. ECKART,
TOM LUKEN,
JOSEPH M. MCDADE,
SILVIO O. CONTE,
WILLIAM S. BROOMFIELD,
LYLE WILLIAMS,

Managers on the Part of the House.

LOWELL P. WEICKER, JR.,
RUDY BOSCHWITZ,
LARRY PRESSLER,
SAM NUSS,
CARL LEVIN,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE
COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 272) to improve small business access to Federal procurement information, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment struck all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The principal differences among the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

Under section 8(e) of the Small Business Act, the Secretary of Commerce is directed to obtain and publish notice of Federal procurements above stated dollar thresholds, with ten enumerated exemptions. The existing statute does not, however, provide for any time intervals between the date of publication of the notice and the awarding of the procurement contract. Both the Senate bill and the House amendment prohibit a Federal department from issuing a solicitation for at least fifteen days after the date of publication of a notice of the procurement in the *Commerce Business Daily* and further prohibit Federal agencies from foreclosing competition for the procurement for an additional thirty days after either the issuance of the solicitation or in the case of orders under a basic agreement, basic ordering agreement, or similar arrangement, the date of publication of a notice of intent to place the order.

The conferees intend that this authority to publish notices of Federal procurements should continue to be vested in the Secretary of Commerce, or in any newly-created cabinet department that encompasses the trade functions of the Commerce Department. The conferees further expect that any other effort to transfer this authority from the department will be undertaken legislatively.

June 23, 1983

CONGRESSIONAL RECORD — HOUSE

H 4433

1. THRESHOLD AMOUNT

Under existing law the publication provisions apply to defense contracts of \$10,000 and above and civilian contracts of \$5,000 and above.

The Senate bill increases the threshold amount on civilian contracts to \$10,000.

The House amendment has no similar provision.

The conference substitute increases the threshold amount on civilian contracts to \$10,000.

2. EXEMPTION FOR CLASSIFIED REASONS

Under existing law there is an exemption from publication of procurements which for security reasons are of a classified nature.

The Senate bill re-worded the exemption to apply to procurements whose disclosure to more than one source would compromise national security.

The House amendment contains no similar provision.

The conference substitute retains the existing law language.

3. EXEMPTION FOR FOREIGN GOVERNMENTS

Under existing law there is an exemption from publication of procurements in which only foreign sources are to be solicited.

The Senate bill exempts from publication procurements in which a foreign government is reimbursing the United States for the cost of the procurement or if the terms of an international agreement or treaty require that the procurement be from specified sources.

The House amendment contains no comparable provision.

The conference substitute exempts from publication those procurements in which a foreign government is reimbursing the United States for the cost of the procurement and only one source is available, or if the terms of an international agreement or treaty authorize or require that the procurement be from specified sources.

4. EXEMPTION FOR CONTRACTS WITH OTHER AGENCIES

Under existing law there is an exemption from publication for those procurements which are made from another government department or agency, or a mandatory source of supply.

The Senate bill provides an exemption for procurements if a statute provides that it be made through another Federal department, establishment, or agency or from a specified source.

The House amendment contains no comparable provision.

The conference substitute exempts from publication those procurements for which a statute provides that they be made through another Federal department or from a specified source, or if the procurement results from acceptance of a proposal pursuant to the Small Business Innovation Development Act of 1982.

5. EXEMPTION FOR UTILITY SERVICES

Under existing law there is an exemption from publication of procurements which are for utility services and the procuring agency in accordance with applicable law has predetermined the utility concern to whom the award will be made.

The Senate bill eliminates this exemption. *The House amendment* contains no comparable provision.

The conference substitute exempts from publication those procurements which are for utility services if only one source is available.

The conferees recognize that some utility services, such as telephone requirements, can, and should be, competed. However, in other instances, the conferees recognize

that competition is impossible due to a monopoly on utility services in a given area, so that a requirement to advertise the procurement would be meaningless. Procurements in this category may include, but are not limited to, electrical services and water supply.

6. EXEMPTION FOR ORDERS UNDER EXISTING CONTRACTS

Under existing law there is an exemption from publication of procurements which are made by an order placed under an existing contract. There is also an exemption for procurements which involve perishable subsistence supplies.

The Senate bill eliminates both exemptions.

The House amendment contains no comparable provision.

The conference substitute exempts from publication those procurements which are made against an order placed under a requirements or similar contract, including orders for perishable subsistence supplies.

The conferees intend that this exemption be used in cases where an agency places an order against an existing contract or a requirements contract. Unless one of the other exemptions from publication applies to the initial, underlying contract, the conferees intend that this original contract only will be synopsized.

The conferees recognize that orders for perishable goods are often made against existing requirements contracts. Under this provision, all such orders for perishables would be exempted from the notice provisions in this law. However, the conferees do intend that whenever possible, and absent any other statutory exemptions, the contract itself, which is certainly not perishable, shall be subject to the notice provisions in this Act.

7. EXEMPTION FOR PERSONAL SERVICES

Under existing law there is an exemption from publication of procurements which are for personal or professional services.

The Senate bill eliminates this exemption. *The House amendment* contains no comparable provision.

The conference substitute retains the Senate provision and eliminates the exemption from publication of procurements which are for personal or professional services.

8. EXEMPTION FOR EDUCATIONAL INSTITUTIONS

Under existing law there is an exemption from publication of procurements which are for services from educational institutions.

The Senate bill eliminates this exemption. *The House amendment* contains no comparable provision.

The conference substitute exempts from publication those procurements which are for services from educational institutions if they result from an unsolicited proposal from those institutions that demonstrates a unique or innovative research concept and publication of such unsolicited proposal would improperly disclose the originality of thought or innovativeness of the proposed research. For all such other unsolicited proposals, the conferees expect that the procuring department will use its utmost discretion to protect the originality and creativeness of the proposal when the agency is required to synopsize the procurement, in the *Commerce Business Daily*.

9. NEGOTIATIONS FOR SOLE SOURCE CONTRACTS

The Senate bill provides that if notice of the procurement action for a sole source contract must be published, the agency cannot commence negotiations for the award of such a contract until at least thirty days have elapsed from the date of publication of proper notice of intent to contract.

The House amendment contains no comparable provision.

The conference substitute provides that if notice of the procurement action for a sole source contract must be published, the department cannot commence negotiations for the award of such a contract until at least thirty days have elapsed from the date of publication of proper notice of intent to contract, but that the department specifically is authorized to respond to requests for information during the thirty-day time period.

10. CONTENT OF NOTICE

The Senate bill specifies that the notice required to be published include a description of the subject matter of the contract, the name and address of the Federal employee who may be contacted to obtain a copy of the contract solicitation or other information, and a statement that any person may respond or submit a bid, proposal or quotation.

The House amendment contains no comparable provision.

The conference substitute requires that the notice contain a clear description of the subject matter of the contract; the name, address and telephone number of the Federal employee who may be contacted to obtain a copy of the solicitation or additional information, and, with respect to sole source contracts, a statement that interested persons are invited to identify their interest and capability or to submit timely proposals.

11. SOLE SOURCE CONTRACTS

The Senate bill prohibits a procuring activity from commencing negotiations for sole source contracts for more than \$100,000 unless the head of the procuring activity has approved the proposal to negotiate and the procuring activity has considered all responses to the procurement action, or unless the negotiation is for an 8(a) contract or an award pursuant to the Small Business Innovation Development Act of 1982.

The House amendment contains no similar provision.

The conference substitute imposes a prohibition against Federal departments commencing negotiations for sole source contracts (except under the 8(a) and Small Business Innovation Research programs) above a threshold amount unless the head of the procuring activity or his deputy, on a non-delegable basis, has approved the authority to enter into such contract and the contracting officer has considered the responses to the notice of procurement action. Federal departments specifically are authorized, however, to respond to request for information.

The conference report provides for a three-year phase in of the dollar threshold at which these provisions will apply. Under the terms of the conference agreement, in fiscal year 1984 the requirements will be imposed on procurement actions in excess of \$1 million; in fiscal year 1985 the level will be reduced to \$500,000; and in fiscal year 1986 and each year thereafter the level will be \$300,000. The conference will carefully monitor all agencies' compliance with the review of the authority to enter into sole source awards, and will consider a further reduction in the threshold level to \$100,000.

12. NOTICE OF SUBCONTRACTING OPPORTUNITIES

The Senate bill requires that in all procurement actions in excess of \$10,000 in which the award of subcontracts is likely, the Federal department entering the contract shall submit for publication in the *Commerce Business Daily* a notice announcing the award of the prime contract.

H 4434

CONGRESSIONAL RECORD — HOUSE

June 23, 1983

The House amendment contains no comparable provision.

The conference substitute requires that in all procurement actions in excess of \$25,000 in which the award of subcontracts is likely, the Federal department entering the contract shall submit for publication in the *Commerce Business Daily* a notice announcing the award of the prime contract.

13. TVA EXEMPTION

The Senate bill provides that this act shall apply to the Tennessee Valley Authority only to the extent it deems practicable, consistent with the purposes and conduct of its programs and the policies of the Small Business Act.

The House amendment contains no comparable provision.

The conference substitute provides that this Act shall apply to the TVA only with respect to procurements to be paid from appropriated funds.

While the conference report will apply the provisions of this Act, as appropriate, to the Tennessee Valley Authority only for those procurements derived from appropriated funds made available to TVA, conferees expect TVA to voluntarily comply with the provisions of this Act to the greatest extent possible for procurements to be paid from power program funds, as well. In a manner consistent with the policies of the Small Business Act and the TVA's responsibility for the operation of its power programs, the conferees further expect TVA to continue awarding a substantial portion of its procurement contracts to small business, regardless of the source of the procurement funds, and to take appropriate additional action, as necessary, to increase small business awareness of, and participation in, TVA's total procurement effort.

14. EFFECTIVE DATE

The Senate bill is effective as to procurement actions initiated forty-five days after the date of enactment.

The House amendment is effective upon enactment.

The conference substitute makes the Act applicable to procurement actions initiated ninety days after the date of enactment except as to the restrictions on sole source contracts which are effective October 1, 1983.

PARREN J. MITCHELL,
NEAL SMITH,
JOSEPH P. ADDABBO,
RON WYDEN,
DENNIS E. ECKART,
TOM LUKE,
JOSEPH M. McDADIE,
SILVIO O. CONTE,
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Managers on the Part of the House.

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SAM NUNN,
CARL LEVIN,

Managers on the Part of the Senate.

APPOINTMENT OF CONFEREES ON H.R. 3132, ENERGY AND WATER DEVELOPMENT APPROPRIATION, 1984

Mr. BEVILL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 3132) making appropriations for energy and water development for the fiscal year ending September 30, 1984, and for other purposes, with Senate amendments thereto, disagree to the Senate

amendments, and agree to the conference asked by the Senate.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Alabama?

There was no objection.

MOTION OFFERED BY MR. CONTE

Mr. CONTE. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. Conte moves that the Managers on the part of the House, at the conference on the disagreeing votes of the two Houses on the bill H.R. 3132, be instructed to insist on the House position on the Garrison Diversion Unit.

The SPEAKER pro tempore. The gentleman from Massachusetts (Mr. CONTE) will be recognized for 1 hour.

Mr. CONTE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, first of all I want to apologize to the House that this matter is being brought up at this hour. I had asked the chairman of the committee whether we could take this up Tuesday morning, and appoint conferees and go to conference then.

Believe me, there is nothing in this bill that is urgent. Unfortunately, the Chairman would rather bring it up tonight; and that is the prerogative of the majority.

I know how you feel about being here tonight, but how do you think I feel?

I was supposed to receive the Man of Vision Award from the Friends of Eye Research this evening, and here I am in the well.

But I do not want any of my colleagues to think that I brought this late session about.

Mr. Speaker, I rise in support of my motion to instruct conferees on the energy and water appropriations bill to insist on the House position with regard to the Garrison diversion unit in North Dakota.

Mr. Speaker, as it passed the House the energy and water bill contained no funding for this project. As I noted in my previous floor remarks, this was appropriate in light of the House's overwhelming vote last December to eliminate funding for this project. The Senate, however, has included \$22.3 million for this project.

Mr. Speaker, I am offering this motion in order to place the House on record once again in opposition to the Garrison project. All of the problems with this project that existed last December, when we voted 252 to 152 to eliminate the Garrison project still exist.

The project is still economically unsound. The project's costs have escalated fivefold from its authorized \$207 million—now hear this—to over \$1 billion, which involves a subsidy of approximately \$800,000 per irrigation project farm. The project will irrigate only six-tenths of 1 percent of the agricultural land in North Dakota, and will encourage the production of addi-

tional crops that are already in surplus.

Let us look at that issue for a moment. The biggest argument for this project is that it is necessary in order to provide irrigation water to permit current dry farmers to grow crops that require irrigation. Yet at the same time the Federal Government is going to be paying billions of dollars to store crops that are in surplus, and, under the payment in kind (PIK) program, to provide crops at Federal expense to farmers who have taken their land out of production.

Mr. Speaker, can it possibly make sense to pay over a billion dollars to complete a massive irrigation project, and then turn right around and pay more Federal money to pay these irrigated farmers not to grow additional crops?

Mr. Speaker, not only does this project not make economic sense, but it would be an environmental disaster. The Garrison project will destroy or degrade 12 congressionally authorized national wildlife refuges—Ducks Unlimited is dead against this project—and an additional 70,000 acres of prime prairie wetlands—vitally important to the survival and breeding of waterfowl that annually migrate between Canada and the United States. Indeed, continued construction of the authorized project would result in the annual destruction of between 175,000 and 350,000 ducks.

There is no adequate wildlife mitigation plan in effect. The most recently proposed plan has major deficiencies, including no provision for obtaining mitigation land except from willing sellers. As my colleagues know, it is often necessary to use the power of eminent domain in order to provide adequate resources of a project of this scope, but this would not be permitted under the proposed mitigation plan. Construction should not continue until there are assurances that mitigation will be adequate.

Finally, Mr. Speaker, there are serious international problems with this project. The completion of this project would violate the 1909 Boundary Waters Treaty between the United States and Canada. Project irrigation would pollute rivers that flow from the United States into Canada, and project waterways will allow the transfer of rough fish into the Canadian watershed, with disastrous results for commercial, sport, and native people's fisheries in the Province of Manitoba.

Mr. Speaker, in response to Canadian objections the project is being constructed in phases, with phase 1 supposedly designed to avoid the transfer of water into the Canadian watershed.

But it is important to recognize that because of Canadian objections, phase 1 may be all that is built. We need to recognize, therefore, that phase 1 is a substantial project in its own right, and not go ahead with phase 1 unless those project features can stand alone.